HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT APPEAL No. 314 OF 2007

Between:

The General Manager,
(Larsen & Toubro Limited)
Bhoogasamudram Village,
Tadipatri Mandal, Anantapur District
and two others.

… Appellants

AND

Lakshmisetti Krishna Prasad
and another.

… Respondents

: JUDGMENT :

Counsel for the appellants : Shri V. Hari Haran

Dated: 23rd April, 2007

Per G.S. SINGHVI, CJ

Having failed to persuade the learned Single Judge to entertain their prayer for stay of award dated 20.12.2006 passed by Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur (respondent No.2) in I.D.No.193 of 2003, the appellants have preferred this appeal under Clause 15 of the Letters Patent.

Respondent No.1 – Lakshmisetti Krishna Prasad joined the service of appellant No.3 company on 24.12.1997 as Technician (Mechanical). He was regularized on that post in July, 1998. On account of some family dispute, he sent telegram dated 22.07.2000 to the management of the company for grant of one month's leave. Later on, he sent two communications for extension of leave for 10 days and then for 20 days. He reported for duty on 11.09.2000, but was not allowed to join. In the meanwhile, a domestic enquiry was instituted against him on the charge of creating nuisance in the residential quarters. After conducting enquiry, the management of the company dismissed him from service with effect from 24.02.2003.

Respondent No.1 challenged his dismissal by filing an application under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short, 'the Act'), as amended by Andhra Pradesh Act

No.36 of 2000. After considering the pleadings and evidence of the parties and hearing their advocates, respondent No.2 passed award dated 20.12.2006 whereby he ordered reinstatement of respondent No.1 with continuity of service, but without backwages.

The appellants challenged the award in Writ Petition No.5986 of 2007. They also filed WPMP.No.7643 of 2007 for staying the operation of the award.

The learned Single Judge admitted the writ petition, but declined to suspend the award.

Shri V. Hariharan, learned counsel assailed the order of the learned Single Judge mainly on the ground that the same is devoid of reasons. He submitted that while dismissing the appellant's prayer for stay, the learned Single Judge was duty bound to record reasons indicating application of mind to the relevant factors and his failure to do so should be treated sufficient for entertaining the prayer for stay. Learned counsel relied on Section 17-B of the Act and the judgment of the Supreme Court in **DENA BANK v KIRITIKUMAR T. PATEL**[1] and argued that once the writ petition questioning the legality of an award passed by the adjudicatory body constituted under the Act is admitted by the High Court, operation of the award should be granted ex debito justitiae subject to the condition of payment of last drawn wages to the workman.

We have considered the submissions of the learned counsel, but have not felt impressed. The admission of the writ petition filed by the appellants is merely indicative of the fact that they have been able to make out an arguable case. However, that by itself does not justify stay of the award of reinstatement as a

matter of course.

We can take judicial notice of the fact that even though the workman constitutes the most important component of any industry, he is always placed in a disadvantageous position, vis-à-vis, the employer. He can never compete with the employer in the matter of financial resources or availability of legal assistance. Therefore, the award of reinstatement passed by the adjudicating body constituted under the Act, which entitles the workman to earn his livelihood and feed himself and his family, cannot be lightly stayed by the High Court. The workman cannot be placed in a position worse than a person in whose favour money decree is passed by the Civil Court. Therefore, stay of an award of reinstatement should not be a rule. Rather, it should be an exception. The High Court can stay the direction for reinstatement only if it is convinced that the award is without jurisdiction or is vitiated by an error of law apparent on the face of the record or that the industrial production will be adversely affected in the event of implementation of the award.

The appellants have neither pleaded nor Shri V. Hariharan has argued that the award impugned in the writ petition is without jurisdiction. Therefore, we do not consider it necessary to delve into that issue.

The question whether the award is vitiated by an error of law apparent on the face of the record will be decided at the time of final adjudication of the writ petition. It is not the pleaded case of the appellants that reinstatement of the workman will cause harm to the establishment of the industry. Therefore, we do not

find any valid ground or justification to entertain the appellant's prayer for stay of the award ignoring the fact that denial of reinstatement of the workman will result in depriving him of his livelihood, which is guaranteed under Article 21 of the Constitution.

The provisions of Section 17-B of the Act on which reliance has been placed by Shri Hariharan do not have any bearing on the present case. That provision is applicable only when the High Court, while entertaining petition filed against the award of the Labour Court/Tribunal, decides to stay the reinstatement of the workman. In the event, the employer is obliged to pay last drawn wages to the workman till the disposal of the writ petition. In **DENA BANK v. KIRITIKUMAR T. PATEL** (supra), the Supreme Court interpreted Section 17-B for the purpose of determining the amount of wages payable to the workman. The proposition laid down in that case has nothing to do with the issue raised in the appeal filed against the order of the learned Single Judge who, while exercising discretion under Article 226 of the Constitution, declined the appellant's prayer for interim stay.

For the reasons stated above, the appeal is dismissed. However, keeping in view the nature of the case, we deem it proper to request the learned Single Judge to entertain and accept the prayer, if any, made by the appellants for out of turn hearing of the writ petition.

G.S.SINGHVI, CJ

C.V.NNAGARJUNA REDDY, J

Date: 23.04.2007
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[1] AIR 1998 SC 511